

(13)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

O.A. No. 512/1995  
T.A. No.

199

DATE OF DECISION : 12.04.2000.

Dwarka Prasad Nai Petitioner

Mr. J.K. Kaushik, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent

Mr. Vineet Mathur, Advocate for the Respondent (s)

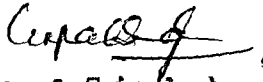


CORAM :

The Hon'ble Mr. A.K. Misra, Judicial Member

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? No
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

  
( Gopal Singh )  
Adm. Member

  
( A.K. Misra )  
Judl. Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH : JODHPUR

Date of order : 12.4.2000

O.A. No. 512/1995

Dwarka Prasad Nai son of Shri Uda Ram by caste Nai aged about 33 years resident of Pabu Chowk, Gangashahar, at present working as Extra Departmental MAIL Peon (under put off duty) at Lalgah Sub-Office under Head Post Office, Bikaner.

... Applicant.

v e r s u s

1. Union of India through Secretary to Government of India, Ministry of Communication (Department of Posts), Dak Bhawan, New Delhi.
2. The Chairman, Postal Service Board (Department of Posts) Ministry of Communication, Dak Bhawan, New Delhi.
3. The Sub-Divisional Inspector of Post Offices, North Sub-Division, Bikaner - 1.

... Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. Vinit Mathur, Counsel for the respondents.

CORAM:

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. Gopal Singh)

In this application under Section 19 of the Administrative Tribunals Act 1985, the applicant, Dwarka Prasad, has prayed as under:-

- (i) That the impugned E.D.A. (Conduct & Service) Rules, 1964, framed by the P&T Board, may be declared ultra-vires the Constitution and the same may be struck down being without jurisdiction, or in the alternative The Rule 9 (3) of EDA (C&S) Rules, 1964 may be declared ultra vires to Article 14 of the Constitution of India and may be struck down being unconstitutional.
- (ii) That the respondents may be directed to make payment of subsistence allowance to the applicant from the date he was

*Gopal Singh*



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put off duty i.e. 5.4.95 till date of revocation of put off duty order and allow all consequential benefits."

2. Applicant's case is that he was initially appointed as Extra Departmental Mail Peon at Lalkar Town Sub Office under the Head Post Office, Bikaner on 1.12.80. An F.I.R. was lodged against the applicant and one Bhanwar Lal, Messenger, on 12.12.94 with the Police Station, Kolegate, Bikaner, alleging that the applicant scored the entries in the Recurring Deposit Pass Book No. 14079 of Smt. Rameshwari, prepared forged documents and withdrew an amount of Rs. 6826.25 through Messenger. The applicant was arrested on 16.2.95, remanded in judicial custody on 17.2.95 and was enlarged on bail 18.2.95. Thereafter, the applicant reported for duty with a medical fitness certificate and was taken on duty on 28.2.95. The applicant was placed under 'put off' duty on 3.4.95. The applicant was issued a charge-sheet on 13.6.95 for (i) unauthorised absence from duty with effect from 20.12.94 to 28.2.95 and (ii) failure to inform his controlling office about his arrest and retention in judicial custody and subsequent release on bail. The contention of the applicant is that he is not being paid subsistence allowance for 'put off' duty as Rule 9(3) of ED Agents (Conduct & Service) Rules, 1964, specifically bars such payment, and, therefore, the present application.

3. This controversy had come up before Hon'ble the Supreme Court in SLP No. 4148/93 etc., decided on 10.7.95. In this judgement, Rule 9(3) of ED Agents (Conduct & Service) Rules, 1964, was declared violative of Article 14 of the Constitution of India and the question of framing a new set of rules substituting Rule 9(3) was left open to the Government. Consequently, the Government amended the provisions<sup>of</sup> Rule 9 vide their letter dated 13.1.97. We consider it appropriate to reproduce relevant provisions of letter dated 13.1.97, as under:-

"2. SLP(C) No...../90 (CC-457) in the matter of Secretary, Ministry of Communications vs. S. Gundu Achary came up for final hearing in the Apex Court on 10.7.95. The Hon'ble Supreme Court while by and large agreeing with the conclusion reached by the Tribunal that Rule 9(3), infringed Article 14 of the Constitution of India, it modified that reliefs granted by the Tribunal in the following terms:

"(1) We declare Rule 9(3) of the Rules as violative of Article 14 of the Constitution of India.

(2) We leave it open to the Government of India to re-examine the matter and if it is so chooses frame a new set of Rules substituting Rule 9 (3).

(3) It would be open to the Union of India to examine each case to reach the conclusion as to whether the individual is entitled to the salary for the period when he was kept off duty

*Capals*



under Rule 9(1) of the Rules. In the event of any of the respondents being exonerated/reinstated in the disciplinary proceedings, the salary for the off duty period can only be denied to him after affording him an opportunity and by giving cogent reasons.

(4) We direct the applicant concerned to afford reasonable opportunity to the respondents in the disciplinary proceedings which are pending or in progress against any of them. This may be done as directed by the Tribunal in J. D'Souza's case.

We make it clear that the directions we have given above shall substitute all the directions given by the Tribunal in the individual cases.

All the appeals and Special Leave Petitions are dispose of as per the above terms. No costs.

3. Pursuant to the above, the provisions contained in Rule 9 of the P&T ED Agents (Conduct & Service) Rules, 1964, have been examined in the light of the above judgement of the Apex Court in consultation with the Nodal Branches of this Office and the Ministry of Law. The existing provisions contained in Rule 9 ibid have been amended. The amended Rule 9 will now reads as follows:-

"9. PUT-OFF-DUTY

(1) The appointing authority of any authority to which the appointing authority is subordinate of any other authority empowered in that behalf by the Central Government by general or special order may put an employee off duty:-

- (a) Where a disciplinary proceeding against him is contemplated or is pending ; or
- (b) Where a case against him in respect of any criminal offence is under investigation, enquiry or trial.

Provided in cases involving fraud or embezzlement, the employee holding any post specified in the Schedule to these rules may be put off duty by the Inspector of Post Offices of the Sub Asstt. Supdt. of Post Offices of the Sub Division under immediate intimation to the appointing authority.

(2) An order made by the Inspector of Post Offices or the Asstt. Supdt. of Post Offices of the Sub Division under sub Rule (1) shall cease to be effective on the expiry of 15 days from the date of such order unless earlier confirmed or cancelled by the appointing authority or the authority to which the appointing authority is subordinate.

(3) An employee shall be entitled per month for the period of put off duty to an amount of compensation as ex-gratia payment equal to 25% of his basic allowances together with admissible Dearness Allowance thereon on such 25% of basic allowances.

Provided that where the period of put off duty exceeds 90 days, the authority which made the order of put off duty shall be competent to vary the amount of compensation for any period subsequent to the period of first 90 days as follows:-

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(i) The amount of compensation as ex-gratia payment may be increased by a suitable amount, not exceeding 50% of such compensation admissible during the period of first 90 days, if in the opinion of the said authority the said period of put off duty has been prolonged, for reasons to be recorded in writing, not directly attributable to the Extra Departmental Agents.

(ii) The amount of compensation as ex-gratia payment may be reduced by a suitable amount not exceeding 50% of such compensation admissible during the first 90 days. If, in the opinion of the said authority the period of put off duty has been prolonged due to, reasons to be recorded in writing, directly attributable to the Extra Departmental Agent.

Note 1 - The rate of dearness allowance will be based on the increased or decreased amount of compensation admissible under sub clauses (i) and (ii) above.

Note 2 - The payment of compensation for the put off duty period shall not be subject to furnishing of a certificate that the Extra Departmental Agent is not engaged in any other employment, business, profession or vocation.

Provided that an Extra Departmental Agent whp has been absconding or remains absent unauthorisedly and is subsequently put off duty shall not be entitled to any compensation as ex-gratia payment.

Provided further that in the event of an ED Agent being exonerated he shall be paid full admissible allowance for the period of put off duty. In other cases, such allowances for the put off duty can only be denied to the ED Agents after affording him an opportunity an by giving cogent reasons.

Note : Any payment made under this rule to an ED Agent on his reinstatement shall be subject to adjustment of compensation already paid as ex-gratia.

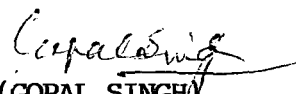
4. This order will come into force from the date of issue."

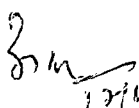
4. Thus, in terms of the amended Rule 9, an ED Agent placed on 'put off' duty would be entitled to ex-gratia compensation for the period of 'put off' duty under certain conditions.

5. In the light of the above discussion, we are of the view that the application deserves to be allowed.

6. The O.A. is accordingly allowed with a direction to the respondents to consider the case of the applicant for grant of ex-gratia compensation in terms of Department of Posts letter dated 13.1.97 and if the applicant is found eligible, grant the same within a period of three months from the date of receipt of a copy of this order.

7. Parties are left to bear their own costs.

  
(GOPAL SINGH)  
Adm. Member

  
( A.K. MISRA )  
Judl. Member

cvr.

Part II and III destroyed  
in my presence on 17.7.06  
under the supervision of  
section officer ( ) as per  
order dated 23.8.06

*[Signature]*  
Section officer (Records)

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